

THE STATE OF LAW AND DEMOCRACY: THE REALITY OF STATE IN THE CONSTITUTIONAL SYSTEM IN INDONESIA

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Abstract

Indonesia constitutionally affirms itself as a state based on law (rechtsstaat), but in practice, tensions often arise between the supremacy of law and political interests. This article aims to analyze the dialectical relationship between the concept of the rule of law and democracy in the Indonesian constitutional system, particularly in the context of post-2024 election dynamics. Using a normative legal approach and an analysis of responsive legal typology by Philippe Nonet and Philip Selznick, this study finds that law enforcement in Indonesia still faces major challenges in the form of legal politicization, the weakening of independent institutions, and a shift towards semantic constitutionalism. This study concludes that strengthening constitutional democracy requires the integration of responsive law, strong political ethics, and constitutional adaptation to digital disruption to maintain genuine popular sovereignty.

Keywords: Rule of Law, Constitutional Democracy, 2024 Election, Responsive Law, Constitutionalism

INTRODUCTION

The idea of a state based on law (rechtsstaat) is a noble ideal that has long dominated the history of human civilization in an effort to limit the power of rulers to prevent them from falling into authoritarianism. In Indonesia, this principle is not merely an academic concept, but a fundamental constitutional foundation. The affirmation of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) that "The State of Indonesia is a state based on law" provides the logical consequence that law must be supreme in all dimensions of state life. However, in the dialectic of state administration, the relationship between law and power is often ambivalent. Law, which should function as an instrument for protecting human rights and limiting authority, is often in reality subordinated to practical political interests (Thamrin, 2024).

Historically, the rule of law in Indonesia has experienced dynamic ups and downs. From the Old Order era, steeped in revolutionary fervor, to the New Order era with its approach to security and stability, to the Reformation era, which promised the supremacy of law, we have seen a shift in the meaning of the Rule of Law, aligned with the preferences of the ruling regime. The main problem that emerged was the tendency to position the law as a "tool" for power (rule by law) rather than as a "control" of power (rule of law). This tension reached its nadir when the democratic system, which should underpin the rule of law, was instead used to legitimize actions deemed ethically and legally flawed (Baidowi, 2023).

The rule of law and democracy are two inseparable (symbiotic) concepts. Democracy without law will give rise to mobocracy anarchic mob rule without rules. Conversely, law without democracy will be merely dry, mechanistic, and repressive, lacking the spirit of participation and legitimacy from the people (Samekto, 2013). In Indonesia, the "Pancasila Rule of Law" demands the integration of the values of divinity, humanity, unity, democracy, and social justice in every piece of legislation. However, the challenges of globalization and technological disruption in the 21st century add to the burden on our constitution. Issues concerning election integrity, judicial independence, and the ethics of state officials are under intense scrutiny, especially after the 2024 elections (Widodo, 2025).

The reality of the 2024 elections demonstrates a profound democratic paradox. On the one hand, formal democratic procedures, such as voting, are taking place en masse, but on the other, the substance of honesty and fairness is widely questioned. The emergence of "semantic constitutionalism," where the text of the constitution is revered but its spirit is betrayed through political maneuvering, poses a real threat to the future of the state (Pralampita, 2024). The use of state instruments to influence people's choices, the weakening of oversight institutions, and the fracturing of moral consensus among political elites indicate that the foundations of our rule of law are seriously eroding (Ginting & Saragih, 2018).

Furthermore, the challenges of digital technology, which brings with it a limitless flow of information, also influence how law and democracy interact. Political hoaxes, algorithmic manipulation, and threats to citizens' personal data demand that the law transform to become more responsive and adaptive. The law should no longer be merely autonomous or rigid in administrative proceduralism, but must be able to address the social need for substantive truth and justice (Winata & Agustine, 2024). Therefore, critical reflection and reconstruction of our constitutional system are necessary to prevent it from becoming trapped in a porous democratic facade. This article will examine in more depth how a responsive legal typology can provide a solution to the democratic impasse in Indonesia, as well as how to maintain the constitution as a "living constitution" capable of limiting the will of absolute rulers (Thamrin, 2024; Syifaurohmah, 2025).

RESEARCH METHOD

This article uses a normative legal research method. The approaches used include:

1. Statute Approach: Examining the norms in the 1945 Constitution and regulations related to elections.
2. Conceptual Approach: Refers to the principles of Rechtsstaat and responsive legal theory (Nonet-Selznick).
3. Historical Approach: Analyzing the development of the Indonesian state system chronologically (Soekanto & Mamudji, 2006).

Data source

The data used in this study is secondary data consisting of:

1. Primary Legal Materials: The 1945 Constitution of the Republic of Indonesia, provisions of state institutions, and related laws and regulations.

2. Secondary Legal Materials: Professors' inaugural speeches, reputable legal scientific journals, political and legal reference books, and official reports related to the implementation of democracy in Indonesia.
3. Tertiary Legal Materials: Legal dictionaries and encyclopedias that provide guidance on primary and secondary legal materials.

Data Collection and Analysis Techniques

Data collection was conducted through library research, which involved an inventory of relevant literature on the topic of the rule of law and democracy. Data analysis was conducted qualitatively using a deductive method, drawing conclusions from general statements (the theory of the rule of law) to specific facts (the reality of democracy after the 2024 elections in Indonesia), resulting in a comprehensive legal argument regarding the challenges of constitutionalism in the modern era.

RESULTS AND DISCUSSION

The Concept of the Pancasila Legal State

Indonesia adopts elements of the Rechtsstaat (Continental European tradition) and the Rule of Law (Anglo-Saxon). The main elements of the Rechtsstaat include the protection of human rights, the separation of powers, and government based on law (Hadsono, 1987). However, Thamrin (2024) emphasized that Indonesia has the distinctive characteristics of a "Pancasila State based on Law," which demands a balance between individual rights, collective interests, and divine values.

Nonet-Selznick's Responsive Legal Theory

Philippe Nonet and Philip Selznick divide the legal order into three typologies (Antasari, 2019):

1. Repressive Law: Law as a servant of power for order.
2. Autonomous Law: Law as an independent institution with strict but rigid procedures.
3. Responsive Law: Law as a means of responding to social aspirations for substantive justice (Syifaurorahmah, 2025). In Indonesia, there is often a shift from autonomous law back to repressive law when political elites use the law to perpetuate their power (Musyarofah & Septiani, 2024).

The Dialectic of Law and Politics in the 2024 Election

Elections are a key pillar of democracy (Budiardjo, 2013). However, the implementation of the 2024 elections has provided critical insights into the decline of substantive democracy. Thamrin (2024) highlighted the phenomenon of vulgar intervention by power, the politicization of social assistance, and the lack of impartiality of the authorities. This creates the impression that the constitution is only implemented "semantically" existing on paper but ignored in practice for the sake of power (Pralampita, 2024).

The legitimacy of democracy is measured not only by electoral numbers, but also by a fair and just process. If the law is subordinated to political interests, it will weaken independent institutions like the Constitutional Court and the General Elections Commission (KPU) (Arliman, 2020; Wahyuni, 2024).

Democratic Ethics and Modern Constitutionalism

Law cannot stand alone without morality. The urgency of democratic ethics in the global era is crucial to prevent corrupt behavior by elites (Ulfah et al., 2020). Democracy without an ethical foundation will create an "illusion of democracy" where formal procedures are met but the values of social justice are marginalized (Ginting & Saragih, 2018).

Constitutional Challenges in the Digital Age

The world is now facing technological disruption that is impacting state governance. Issues such as political hoaxes, personal data protection, and cyber threats demand adaptive constitutional interpretation (Winata & Agustine, 2024). The Constitutional Court must act as a guardian of citizens' digital sovereignty (Adhani, 2024; Widodo, 2025).

Reconstruction of the State System

To restore the dignity of the rule of law, several steps are required:

1. Independence of State Institutions: Freeing judicial and supervisory institutions from executive intervention (Arliman, 2020).
2. Election Regulation Reform: Evaluating the simultaneous election system to reduce high political costs and potential fraud (Rundengan, 2022; Surbakti, 2008).

3. Strengthening Legal Culture: Building constitutional awareness at the elite and community levels through ethical political education (Sukiyat, 2020).

CONCLUSION

The rule of law and democracy are two sides of the same coin. The reality of the 2024 elections demonstrates that Indonesia is still struggling against the pull of repressive and autocratic laws. The future of Indonesian democracy depends on our ability to position the law as a fair limit on power, not as a tool for legitimizing those in power. True popular sovereignty can only be achieved if the law is responsive to the values of justice and grounded in high political ethics.

REFERENCES

Adhani, H. (2024). The Indonesian Constitutional Court in the digital era: Efforts to uphold the constitution, substantive justice, and a culture of constitutional awareness. *Journal of Law Enforcement and Justice*, 5(1), 15–29.

Antasari, RR (2019). A study of the development of types of legal order in Indonesia from the perspective of Nonet-Selznick's thinking towards just law. *Nurani: Journal of Sharia and Community Studies*, 19(1), 103–118.

Arliman, L. (2020). The Position of Independent State Institutions in Indonesia to Achieve the Goals of a Legal State. *Kertha Semaya: Journal of Legal Studies*, 8(7), 1030–1043.

Baidowi, A. (2023). The rule of law and democracy in Indonesia: Historical and contemporary perspectives. *Resolution: Journal of Social Politics*, 3(1), 45–60.

Budiardjo, M. (2013). Basics of political science. Gramedia Pustaka Utama.

Djauzie, MZ (2025). Pancasila as a grundnorm according to Hans Kelsen's pure legal theory and the responsive legal theory by Philippe Nonet and Philip Selznick. *To-Ra Law Journal*, 11(1), 239–252.

Ginting, FPP, & Saragih, A. (2018). The illusion of substantive democracy in Indonesia: A critique of the implementation of the parliamentary threshold. *Politeia: Journal of Political Science*, 10(2), 79–90.

Hadjono, PM (1987). Legal protection for the Indonesian people. Bina Ilmu.

Khoirunnisa, PD, & Triadi, I. (2024). Transformation of constitutional law in the digital era: Challenges and opportunities. *SYARIAH: Journal of Legal Studies*, 1(3), 105–112.

Liddle, RW, et al. (2012). Improving the quality of democracy in Indonesia. Paramadina Endowment Foundation.

Musyarofah, L., & Septiani, E. (2024). The influence of Philip Nonet and Selznick's thinking on the development of autonomous law in developing regions. *Student Research Scientific Journal*, 2(6), 344–352.

Nurmansyah, N. (2024). Post-truth politics: Challenges for mainstream media in Indonesia in facing the wave of hoaxes. *Tambusai Education Journal*, 8(3), 47475–47480.

Pralampita, T. (2024). The rule of law and democracy in relation to their implementation in Indonesia. *ISO Journal: Journal of Social, Political and Humanitarian Sciences*, 4(2), 18–30.

Rundengan, S. (2022). Problems of the 2024 Simultaneous Elections and Regulatory Reconstruction. KPU Law Book.

Samekto, FA (2013). The relationship between law and power: Seeing law from a realistic perspective. *Unsyiah Law Journal*.

Soekanto, S., & Mamudji, S. (2006). Normative legal research: a brief review. Rajawali Pres.

Surbakti, R. (2008). Engineering the election system to build a democratic political order. Kemitraan.

Syifaurohmah, SZ (2025). Legal theory from the Robert Nonet and Philip Selznick era and its relevance to sustainable development in Indonesia. *Decentralization: Journal of Law, Public Policy, and Governance*, 2(4), 168–177.

Thamrin, H. (2024). The rule of law and democracy: The reality of statehood in the Indonesian constitutional system [Professor's Inaugural Speech]. Awang Long College of Law.

Ulfah, N., Hidayah, Y., & Trihastuti, M. (2020). The urgency of democratic ethics in the global era: Building ethics in expressing opinions. *Journal of Citizenship Education*.

Wahyuni. (2024). Legal and democratic reform after the 2024 General Election. *Madika: Journal of Politics and Governance*, 4(2), 146–157.

Widodo, MT (2025). Challenges of constitutional implementation in the digital era: A legal and human rights perspective. *Renvoi Journal: Journal of Law and Sharia*, 3(2).

Winata, MR, & Agustine, OV (2024). Reconnecting law and technological disruption through constitutional interpretation to support sustainable economic development. *Indonesian Journal of Legislation*, 21(1), 55–68.